

Internal Revenue Service

Department of the Treasury

District
Director

Person to Contact:

Telephone Number:

Refer Reply to:

Date:

APR 02 1991

CERTIFIED MAIL

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were incorporated under the non-profit corporation laws of [REDACTED] on [REDACTED]. The objects and purposes for which you were created are as follows:

- (a) To establish and carry on a private non-profit private school, including nursery, pre kinder and kindergarten to college level, or schools for the education of persons in [REDACTED], where students may obtain a sound classical, mathematical, technical, Christian and general education, and do all lawful things that may be convenient or incidental to the management, conduct, financing, or operation of schools.
- (b) To provide for the delivery and holding of lectures, exhibitions, public meetings, classes, and conferences calculated, directly or indirectly, to advance the cause of education, whether general, professional, or technical.
- (c) To gather, receive and disseminate such information as may seem helpful in the instruction of students, and to promote helpful vocational advice and guidance.

- (d) To confer diplomas of merit on all those who become proficient in one or more of the branches of instruction offered at the school or schools maintained by this corporation.
- (e) To promote and provide Christian Educational programs to all interested persons especially those mentioned herein.
- (f) To create a scholarship program to financially assist children from economically depressed homes.
- (g) To provide instruction basically in the English language but to provide bilingual education as determined by the Board of Directors in all areas covered by these articles of incorporation.
- (h) To promote and sponsor educational and cultural trips throughout [REDACTED] or elsewhere.
- (i) To sponsor teacher training institutes, research laboratories.
- (j) To establish and operate housing, accommodation, and full services to the elderly.
- (k) To establish and operate nursing home or homes and all services connected therewith as deemed necessary by the Board of Directors subject only to the availability of funds.

In our request for additional information, we asked for clarification of your primary activity since your Articles of Incorporation listed numerous activities as part of your purposes. You responded with "Our primary activity is to teach children between the ages of two through five years old on a kindergarten level and prepare them with a good foundation." In regard to the other activities, you stated that "We are not yet involved in these activities and we cannot give you a date, Hurricane Hugo has left us on a limb, therefore we are only doing the most necessary things, like taking care of toddlers to enable parents to work. Due to our present situation we are not yet involved in these activities. Before we are engaged in them, we will inform you."

Your activities consist of a day care operation. Your facility is opened Monday through Friday, from 7:30 a.m. to 5:30 p.m. Children are accepted on a first come first serve basis. You have a regular faculty and curriculum. You stated that the purpose of your facility is to encourage parents to be employee and to enable single parents with no skills to attend Government programs that would prepare them for jobs. Ninety percent of parents are employed.

[REDACTED]

Your facility is located in the home of your Director and Operator. The home consists of [REDACTED] rooms and is occupied by [REDACTED] people. In addition to the Day Care facility, the home also houses a church that is pastored by the Director. You indicated that three bedrooms, two bathrooms, a dining room and kitchen are used exclusively for personal use.

Control of your organization is held by your governing body which consists of [REDACTED], his wife [REDACTED] and [REDACTED].

Your income is derived from registration and tuition fees. Your expenditures are for salaries, food, maintenance, utilities, rent, transportation, supplies, insurance and advertising.

When questioned about your expenditures, you indicated that salaries are paid to your teaching staff only. Maintenance expense consists of cleaning, painting, repairing rooms, window and doors, screens, plumbing, landscaping etc. [REDACTED] percent of the utilities are paid by your day care and [REDACTED] percent are paid by your church, thereby leaving [REDACTED] percent for personal use.

The rent is paid to your Director and Operator. There is no lease agreement. You stated "We determined the rent by the volume of children that comes in for the month, we never have a steady flow of children." You further stated that "The rent is determined by \$[REDACTED] a month per child."

Section 501(c)(3) of the Internal Revenue Code provides for exemption from federal income tax for organizations which are organized and operated exclusively for religious, charitable, or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(d)(1)(ii) of the Income Tax Regulations states that an organization is not operated exclusively for section 501(c)(3) purposes unless it serves a public rather than private interest. Thus, to qualify under section 501(c)(3), an organization must establish that it is not organized or operated for the benefit of private interests such as designated individuals, or persons controlled directly or indirectly by such private interests. An organization's officers, members, founders, or contributors may not, by reason of their position, receive direct or indirect benefit from its funds other than as reasonable payment for goods or services.

[REDACTED]

The Supreme Court has held that the presence of a single non-charitable purpose or activity, if substantial in nature, will preclude exemption under section 501(c)(3) of the Code regardless of the number or importance of truly charitable purposes or activities. Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279 (1945) C.B. 375.

Based on the information submitted, the funds of the organization have been used to personally benefit the Director and Operator of the organization. Your method of determining rent is not based on the fair market value of the property and there's no ceiling set for the total amount of rent that can be paid.

Therefore, we conclude that you are not organized and operated exclusively for exempt purposes described in section 501(c)(3) of the Code. Although many of your activities further educational and charitable purposes, the use of the organization's funds to pay for the household expenses of the founders constitutes inurement which is prohibited within the meaning of section 501(c)(3). We, therefore, cannot conclude that only an insubstantial part of your activities are in furtherance of nonexempt purposes. Better Business Bureau of Washington, D.C. v. United States, 326, U.S. 279 (1945), 945 C.B. 375.

Accordingly, you are not exempt from federal income tax returns under section 501(c)(3) and contributions to you are not deductible under section 170 of the Code. You are required to file federal income tax returns.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892. Your appeal should give the facts, law and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

[REDACTED]

If you do not appeal this determination within 30 days from the date of this letter, as explained in the enclosed Publication 892, this will become our final determination on this matter. In accordance with section 6104(c) of the Code, we are notifying the appropriate state officials of this determination. Further, if you do not appeal this determination within the time provided, it will be considered by the Internal Revenue Service as a failure to exhaust available administrative remedies. Section 7428(b)(2) provides, in part, that, "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Sincerely yours,

[REDACTED]
[REDACTED]
District Director

Enclosure: Publication 892

cc: [REDACTED]